Awaits

MARCELLO

Transfer to Prison

SURRENDERS

HERE

THE STATES-ITEM
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By JAMES HEARTY

Rackets figure Carlos Marcello today surrendered to the U.S. marshal here and promptly was placed in a cell awaiting transfer to a federal prison to serve six months for assaulting an FBI agent.

Shortly after the surrender, attorneys for Marcello filed a writ of habeas corpus asking for his release.

The writ is based on the contention that Congress exceeded its authority when it enacted a law to designate a crime and exclude knowledge as an element of that crime.

MARCELLO HAS contended he did not know the man was from the FBI but believed him to be a news photographer.

The writ further argues that the courts erred in holding the law did not require knowledge that the man was an agent.

The writ was assigned to Judge Fred J. Cassibry for action.

Marcello arrived at the Wildlife and Fisheries Building, which houses federal courts here, at 9:40 a.m. today. He was under orders from the U.S. attorney's office in Houston to surrender not later than 10:16 a.m. today.

Accompanying Marcello were his son, Joseph C. Marcello, and two attorneys, Dean A. Andrews and Michael F. Barry.

MARCELLO, SMILING and looking dapper in a dark business suit, entered from Chartres Street, boarded an elevator and went to the third floor where Marshal O. L. Canion's office is located.

Marcello paused to make a call from a pay telephone and then walked into Canion's office. He smiled and joked with authorities but had no comment to make.

Andrews, on entering the office, said, "We are complying with the law and turning ourselves over to the U.S. marshal."

There was no immediate verification of where Marcello may be sent to serve his sentence but sources in Houston indicated it may be either Seagoville, Texas, near Dallas, or El Reno, Okla., both minimum security facili-

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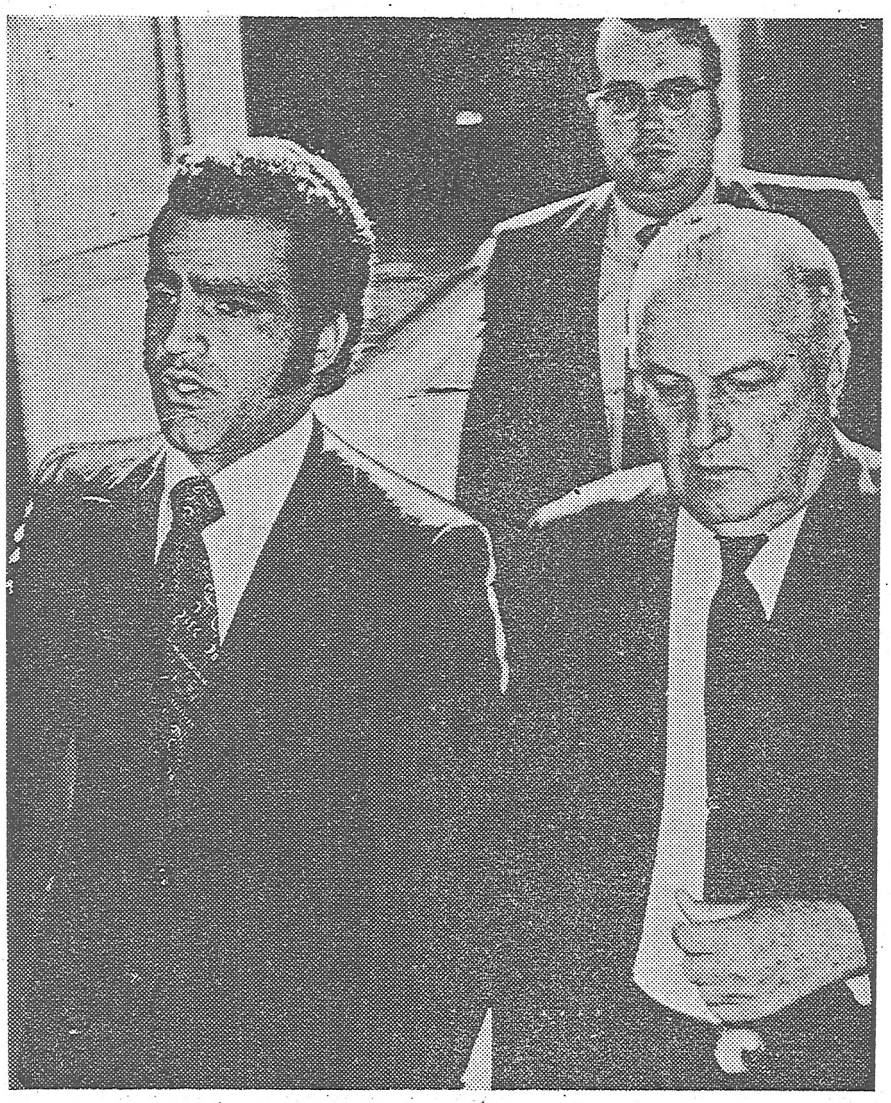

—Associated Press photo by Jack Thornell.

Reports for Jail Term . . .

CARLOS MARCELLO, right, is accompanied by his son, JOSEPH C., while en route to surrender to U. S. marshals to begin serving a six-month prison sentence. Behind them is attorney MICHAEL F. BARRY.

Marcello Surrenders Here

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ties. The decision is up to the Federal Bureau of Prisons.

The surrender in New Orleans caught most authorities by surprise because defense attorneys had indicated he would give himself up in Houston, the scene of his conviction.

A SPOKESMAN FOR the marshal's office in Houston said all the papers dealing with Marcello's case were being forwarded to New Orleans today so that he could be processed here.

U.S. Attorney J. P. Farris in Houston ordered Marcello to surrender this morning to begin serving the sentence for assaulting and intimidating FBI agent Patrick Collins at New Orleans International Airport Sept. 20, 1966.

Yesterday, the U.S. Supreme Court, by a 7 to 2 vote, rejected a move which would have granted Marcello continued bail while attorneys worked for a new trial.

LAST NIGHT, the 60-year-old Metairie millionaire lost another try at a postponement when Chief Judge John R. Brown of the U.S. 5th Circuit Court of Appeals in Atlanta refused to grant a stay.

Marcello was convicted in Houston in 1968 after an earlier trial in Laredo, Tex., ended in a mistrial. The case had been moved from New Orleans because of unfavorable publicity here.

Marcello was seeking a new trial on grounds the government withheld vital evidence favorable to Marcello and the prosecution's chief witness committed perjury.

JUDGE JOHN V. Singleton first sentenced Marcello to two years in prison and a fine of $5,000. Marcello was released under a $25,000 bond.

Judge Singleton announced Friday that because of Marcello's age and the circumstances of the case in he was cutting the jail term to six months. He left the fine in effect but placed Marcello on two years' probation.

Judge Brown's decision not to grant a new stay came last night after two hours of oral arguments by defense attorneys. On Sept. 8 Judge Brown sat on a three-judge court that rejected an earlier move for a stay.

That action brought on the Supreme Court consideration of the case. It, too, had rejected an earlier appeal effort.

Two of the justices, Hugo Black and William O. Douglas, dissented from yesterday's majority opinion.

"THE ENTIRE CASE and circumstances shown by the record are highly disturbing," Justice Black said in his dissent.

He noted that the FBI had alerted the news media that Marcello was arriving at the airport. Collins allegedly was intimidated while mixing with photographers in the airport terminal. Marcello has contended that the government entrapped him by posing the agent as a photographer.

Justice Black called incredible the government's denial that it had any evidence favorable to Marcello.

"I have no doubts of the relevance of this evidence in the eyes of a jury considering Marcello's defense that the FBI was after him and had provoked the incident," Justice Black wrote.

The government's conduct in the case raises questions worthy of review, he added.